

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	Criminal No. 1:00-CR-00023
	:	
v.	:	(Judge Caldwell)
	:	
HOWARD A. BURKE	:	(Electronically Filed)

MOTION FOR RELIEF UNDER 18 U.S.C. § 3582(c)

AND NOW comes Howard A. Burke, by his attorney, Heidi R. Freese, of the Federal Public Defender's Office, and files this Motion for Relief Under 18 U.S.C. § 3582(c), and in support thereof, avers as follows:

1. On May 17, 2000, Howard Burke pled guilty to distribution and possession with intent to distribute 50 grams or more of cocaine base, a/k/a "crack," in violation of 21 U.S.C. § 841(a)(1).
2. The Court ordered the preparation of a presentence report.
3. The 1998 Edition of the United States Sentencing Guidelines Manual was used to calculate Mr. Burke's sentencing guideline range.
4. The presentence report provides that Howard Burke was accountable for at least 150 grams but less than 500 grams of crack cocaine.

5. The presentence report listed the base offense level as 34. Two points were added pursuant to USSG § 2D1.1(b)(1), for a total offense level of 36.
6. On January 3, 2001 Mr. Burke appeared before this Honorable Court for sentencing.
7. The Court adopted the presentence report, except the Court found that Mr. Burke accepted responsibility for the offense. The Court found Mr. Burke's total offense level to be 33.
8. Howard Burke was assigned a criminal history category of I.
9. Mr. Burke's sentencing guideline range was 135 to 168 months.
10. On January 3, 2001, this Honorable Court sentenced Mr. Burke to a term of 135 months imprisonment, representing a sentence at the bottom of the guideline range.
11. Howard Burke is serving his sentence at Reeves Detention Center.
12. Howard Burke's projected release date is April 2, 2010.
12. On November 1, 2007, the United States Sentencing Commission amended the Drug Quantity Table resulting in a two level reduction in offense level for an offense involving at least 150 grams but less than 500 grams of cocaine base .

13. On December 12, 2007, the United States Sentencing Commission announced its decision to apply the amendments to the crack guidelines retroactively effective March 3, 2008 and listed Amendment 706 in the new U.S.S.G. § 1B1.10(c).

14. Pursuant to 18 U.S.C. § 3582(c)(2), “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . upon motion of the defendant . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable,”

15. Under the retroactive application of the amendment to the sentencing guidelines, Howard Burke’s new base offense level is 32. Two points are added pursuant to USSG § 2D1.1(b)(1), for an amended adjusted offense level of 34.

16. With a three-level reduction for the acceptance of responsibility, Mr. Burke’s amended total offense level is 31.

17. An offense level of 31 and a criminal history category of I results in a now advisory guideline imprisonment range of 108 to 135 months; however, Mr. Burke is subject to a statutory minimum term of imprisonment of ten years, which results in a guideline imprisonment range of 120 to 135 months.

18. Because Mr. Burke's initial sentence of 135 months was at the bottom of the guideline range, Mr. Burke respectfully requests that this Honorable Court impose the statutory mandatory minimum sentence of 120 months in accordance with 18 U.S.C. § 3582(c)(2).

19. Mr. Burke respectfully requests this Honorable Court to exercise its discretion and impose the statutory mandatory minimum sentence of 120 months, a fifteen-month reduction from the sentence previously imposed.

WHEREFORE, it is respectfully requested that this Honorable Court grant the foregoing Motion for Relief Under 18 U.S.C. § 3582(c).

Respectfully submitted,

Date: April 22, 2008

/s/ Heidi R. Freese

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CERTIFICATE OF SERVICE

I, Heidi R. Freese of the Federal Public Defender's Office, do hereby certify that I served a copy of the foregoing **MOTION FOR RELIEF UNDER 18 U.S.C. § 3582(c)(2)**, via Electronic Case Filing, or by placing a copy in the United States mail, first class in Harrisburg, Pennsylvania, addressed to the following:

MARTIN C. CARLSON, ESQUIRE
United States Attorney's Office

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HOWARD BURKE

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Date: April 22, 2008

/s/ Heidi R. Freese

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